

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

ROBERT CARTY, Individually and as Parent  
and Next Friend of Minor E.C.,

v.

UNITED PARCEL SERVICE, INC.

Civil Case No.: 1:19-cv-00354-JL

**OBJECTION TO DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS**

Plaintiff Robert Carty, Individually and as Parent and Next Friend of Minor E.C., by and through his attorneys, Primmer Piper Eggleston & Cramer PC, submits the following Memorandum of Law in support of his Objection to Defendant's Motion for Judgment on the Pleadings.

UPS makes two legally unsupported arguments for dismissal. It first argues that the Federal Aviation and Administration Authorization Act of 1994 ("FAAAA") preempts state-law personal injury negligence claims. That contention, however, ignores a vast body of case law that such claims are not preempted, as they do not relate to a motor carrier's "service" as that term is used in the statute. UPS additionally argues that a negligence action cannot be maintained as the injury was not foreseeable. A closer look, however, at the legal standard for foreseeability belies that contention.

For those reasons, described in greater detail in the accompanying memorandum of law, UPS has presented no adequate grounds for judgment on the pleadings. Accordingly, the Court should deny UPS' motion.

Respectfully submitted,

**ROBERT CARTY, as parent and next  
friend of ELIZABETH CARTY**

by his attorneys,

**PRIMMER PIPER  
EGGLESTON & CRAMER PC**

Dated: August 22, 2019

by:

/s/ Gary M. Burt

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**CERTIFICATE OF SERVICE**

The foregoing Initial Disclosures have this day been forwarded via email to Attorney Jonathan M. Eck.

/s/ Gary M. Burt

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